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Judiciary Committee
Connecticut General Assembly
300 Capitol Ave
Hartford Ct. 06106

Re: Amend Raised Bill No. 6608, Revised Uniform Arbitration Act

Dear Committee:

I am an attorney in private practice who has been representing consumers for many years. I am personally aware of the problems caused by arbitration proceedings for consumers, including fine print clauses in credit repair, debt settlement, and payday loan agreements that mandate arbitration in a distant forum to insure that a consumer is unable to challenge fraudulent, deceptive or illegal practices; and that such practices, on the rare occasion when they are challenged, are swept under the rug in secret proceedings.

You have no doubt heard about the "neutral" arbitration provider, National Arbitration Forum, which closed to consumer arbitration cases in July 2009, after they were "found out": NAF was owned by the collection mills that regularly got NAF to rubber stamp unexplained awards against consumers – including victims of identity theft.

Creditors began inserting mandatory arbitration clauses in their contracts in 1999. Because of vociferous consumer complaints, most legitimate creditors have removed them. In my experience, only scams (such as debt elimination or credit repair) now use arbitration clauses, and in a most oppressive manner – requiring consumers to arbitrate in Texas or Utah, for instance.

"Nestling arbitration clauses in the fine print of credit card agreements, patient consent forms and employment contracts is a deceitful tactic used against an estimated 30 million Americans nationwide. It sends disputes between a person and a corporation to a closed-door, unregulated resolution process hidden from outside view." "Corporate clients get preferential treatment; regular people do not get anything resembling neutral decision-making."[1]

[1] http://www.thenation.com/doc/20090223/franklin. "***Arbitration does not grant the three main safeguards guaranteed by our public courts: fairness, accountability and neutrality.***"

Joanne S. Faulkner Comments on Raised Bill No. 6608, Revised Uniform Arbitration Act

First: Sections 5 and 22 provide no time limit to a motion to confirm the award, whereas sections 23 and 24 limit the consumer to 30/ 90 days to challenge the award. AMEND to make the time limits one year for both, to even the playing field which is now skewed in favor of the party that won arbitration (as we know, always the debt collector or creditor in consumer collection cases). Changing the statute of limitations for both parties to 1 year would give consumers -- who may have never agreed to arbitration, not owed the debt, and/or never been notified that an arbitration proceeding had even happened -- a fairer chance to make their case to a court. I have seen the NAF deliberately send the notice of award to a consumer's old address to reduce the possibility of challenge, in a situation that involved ID theft.

Second: Sections 16 and 21(b) should be AMENDED to specify that the attorney who represents a party or who seeks a fee award must be a member of the bar of this state, per Connecticut case law and recently adopted PB provisions. The law should not allow the unauthorized practice of law.

Third: Section 19 requires a record of an award. AMEND to mandate an itemization of the award, which even arbitration petitioners cannot explain, to disclose the elements, such as principal, interest, fees, costs. Even though the arbitration contract normally says that the consumer is entitled to an itemization of the award upon request, arbitrators routinely refuse to disclose the elements of the award, which handicaps anyone wishing to challenge any part of it.

Fourth: Section 4 outlaws certain provisions, but omits a prohibition on **distant venue**. Many consumer contracts now include boilerplate provisions requiring a consumer to arbitrate in a distant forum, which is so prohibitively expensive as to preclude any enforcement of their rights. AMEND to void any agreement to arbitrate in a state other than Connecticut.

Fifth: Section 4 should also bar the imposition of any costs of the arbitration on an individual person. An arbitration forum generally requires the payment of high initial filing fees, and then payment of the arbitrator at rates of $500 per hour or more. Going to arbitration is prohibitively expensive and the costs are one aspect of the way the fine-print arbitration mandatory clause precludes the consumer from any remedy, even in arbitration. AMEND to preclude the imposition of arbitration costs on an individual.

Sixth: NEW PROVISION: Bar mandatory arbitration in consumer insurance contracts. Without a doubt, Connecticut has the legal authority to protect residents from being forced into arbitration by insurers to resolve disputes over the extent of health care coverage, nursing home care or auto coverage. Twenty-three states have enacted laws or regulations that ban pre-dispute binding mandatory arbitration clauses ("BMA") from all or some insurance contracts.

Cal. Code Civil Proc. 1281.96

(a) Except as provided in paragraph (2) of subdivision (b), any private arbitration company that administers or is otherwise involved in, a consumer arbitration, shall collect, publish at least quarterly, and make available to the public in a computer-searchable format, which shall be accessible at the Internet Web site of the
private arbitration company, if any, and on paper upon request, all of the following information regarding each consumer arbitration within the preceding five years:

(1) The name of the nonconsumer party, if the nonconsumer party is a corporation or other business entity.

(2) The type of dispute involved, including goods, banking, insurance, health care, employment, and, if it involves employment, the amount of the employee's annual wage divided into the following ranges: less than one hundred thousand dollars ($100,000), one hundred thousand dollars ($100,000) to two hundred fifty thousand dollars ($250,000), inclusive, and over two hundred fifty thousand dollars ($250,000).

(3) Whether the consumer or nonconsumer party was the prevailing party.

(4) On how many occasions, if any, the nonconsumer party has previously been a party in an arbitration or mediation administered by the private arbitration company.

(5) Whether the consumer party was represented by an attorney.

(6) The date the private arbitration company received the demand for arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or private arbitration company.

(7) The type of disposition of the dispute, if known, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing.

(8) The amount of the claim, the amount of the award, and any other relief granted, if any.

(9) The name of the arbitrator, his or her total fee for the case, and the percentage of the arbitrator's fee allocated to each party.

(b) (1) If the information required by subdivision (a) is provided by the private arbitration company in a computer-searchable format at the company's Internet Web site and may be downloaded without any fee, the company may charge the actual cost of copying to any person who requests the information on paper. If the information required
by subdivision (a) is not accessible by the Internet, the company shall provide that information without charge to any person who requests the information on paper.

(2) Notwithstanding paragraph (1), a private arbitration company that receives funding pursuant to Chapter 8 (commencing with Section 465) of Division 1 of the Business and Professions Code, and that administers or conducts fewer than 50 consumer arbitrations per year may collect and publish the information required by subdivision (a) semiannually, provide the information only on paper, and charge the actual cost of copying.

(c) This section shall apply to any consumer arbitration commenced on or after January 1, 2003.

(d) No private arbitration company shall have any liability for collecting, publishing, or distributing the information required by this section.